

IN THE UNITED STATES MAGISTRATE COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

UNITED STATES OF AMERICA,

vs.

2:14-CR-111

KEVIN FORD and
MERCEDES HATCHER,

Defendants.

TRANSCRIPT OF PROBABLE CAUSE AND DETENTION HEARING

BEFORE THE HONORABLE JOHN E. MARTIN

UNITED STATES MAGISTRATE

HAMMOND, INDIANA

DECEMBER 9, 2014

Proceedings recorded via CD. Transcript produced by
computer-aided transcription.

A P P E A R A N C E S

FOR THE GOVERNMENT:

Diane Berkowitz
U.S. Attorney's Office
5400 Federal Plaza, Suite 1500
Hammond, IN 46320
(219) 937-5500

FOR DEFENDANT KEVIN FORD:

Scott L. King
Scott King Group
9211 Broadway
Merrillville, IN 46410
(219) 769-6300

FOR DEFENDANT MERCEDES HATCHER:

Ashwin Cattamanchi
Federal Community Defender
31 East Sibley Street
Hammond, IN 46320
(219) 937-8020

Kevin Ford and Mercedes Hatcher, Defendants, present in person.

1 THE COURT: Okay. We are back in the matter of
2 *United States of America vs. Kevin Ford*, and *United States of*
3 *America vs. Mercedes Hatcher*, 2:14-CR-111.

4 Defendant Ford is here in court with counsel, Scott King.
5 Defendant Hatcher is here in Court with counsel, Ashwin
6 Cattamanchi. And the Government is represented by its
7 Assistant United States Attorney, Diane Berkowitz.

8 When we last were convened, we were hearing evidence. The
9 Government, I think, was presenting some evidence in the
10 hearing on the motion to modify conditions of pretrial release.
11 One had been filed by both defendants.

12 Are we prepared to proceed, to continue, Ms. Berkowitz?

13 MS. BERKOWITZ: Your Honor, my understanding was this
14 was defendants' motion, and they would present, and I would
15 respond to whatever they had, if they had some evidence to
16 support their request to change the conditions of release.

17 THE COURT: We hadn't actually gotten into the
18 Government's evidence yet.

19 MS. BERKOWITZ: That's right.

20 THE COURT: Okay. So, Mr. King, you were going to go
21 forward, I believe, first?

22 MR. KING: Yes.

23 THE COURT: Okay.

24 MR. KING: Judge, I'd like to submit by proffer.

25 THE COURT: Yes, that would be fine.

1 MR. KING: First of all, with respect to the terms
2 and conditions of (inaudible).

3 THE COURT: You know, on that, Mr. King, what do you
4 request the Court to do?

5 MR. KING: What I'm requesting the Court to do
6 (inaudible). So, I mean, I don't know how else to fashion
7 this. If -- I mean, I can't believe pretrial services is going
8 to want to conduct supervised visitation. The man has a right
9 to see his child. Frankly, I think he has a right to see
10 (inaudible). You know, the Government is counting on
11 (inaudible) what they provided us in discovery, and we thank
12 them.

13 When my client was incarcerated back in 2012 in a state
14 court case (inaudible). Now, in 2014, since that time, has
15 been (inaudible).

16 Unlike the old days, when an artist (inaudible). And then
17 promotion, production (inaudible). That's not how it works.
18 In this day and age (inaudible), he does his own (inaudible).
19 He does his own production. They typically are done under the
20 auspices of a promoter (inaudible). Gets the show together and
21 then promotes it.

22 In the exhibit the Government attached in their response
23 to our request to modify, they delineated -- they describe it,
24 in their word, as a posting -- November 8th, 2014, a posting
25 made on behalf of Defendant Ford on Defendant Ford's Facebook

1 page advertising an out on bond, cash bail, in an Illinois
2 strip club, and they attach it.

3 Now, number one, I want to use this as an example of how
4 his music business functions, but, first, I want to point out,
5 as to the Government concedes, he didn't post it.

6 Secondly, I am proffering, I conducted an interview with
7 the promoter.

8 THE COURT: Did you say the Government concedes he
9 didn't post this?

10 MR. KING: Well, in their filing, they're saying he
11 didn't -- he said it was made on behalf of -- in paragraph two
12 of the filing.

13 THE COURT: Okay.

14 MR. KING: That's the concession at least as I
15 (inaudible).

16 If you look at the exhibit that's attached, the John Doe
17 The King Moseley (inaudible), that's the promoter. He is the
18 one that posted on my client's fan Facebook page, the promotion
19 for the performance, the new (inaudible) Chicago for November
20 8th, which was a rap performance, and I'm assuming there were
21 other artists, too, including apparently a lady (inaudible).
22 Oh, no. Let's see here. There's a couple in here.

23 Anyway, so he didn't post it. And, in my interview of
24 Mr. John Moseley by telephone yesterday, he acknowledged he's a
25 promoter. He acknowledged he posted this document. And,

1 further, on questioning, he said he was not asked to do so by
2 Kevin Ford. He, in fact, went on to say, "I invest my money in
3 putting together and arranging the acts and putting together
4 the venue. I do this so I can get my money back and so I can
5 make a profit."

6 But he was very clear in stating in no way, shape, or form
7 (inaudible). So I want to dispel the notion that's suggested
8 by the Government that their Exhibit A is somehow demonstrative
9 of him having violated the current conditions of release. He
10 didn't. He didn't. It wasn't on his behalf. Was it to his
11 benefit? It was, but it was to the promoter's benefit first
12 and foremost. And, again, in that telephone conversation
13 yesterday, he (inaudible).

14 So his livelihood depends on his ability not only to
15 create rap music but to sell it and to make personal
16 appearances. "I'm going to be at whatever club this is. I'm
17 going to be at this club."

18 He, through these meetings, he can sell, he can permit
19 somebody that wants to buy a version of his song to download
20 through a PayPal transaction so the person can go on -- "I want
21 to buy whatever song." They can through PayPal. They can, in
22 fact, do it. They can download it and obtain it.

23 He sells in this direct marketing (inaudible). He will
24 purchase service from any number of, for want of a better term
25 (inaudible). I've seen it even, you know, frankly, typically,

1 on a Google situation -- the services of a company that will
2 enhance your position on let's use Google as an example. If
3 you Google my law firm, or if you Google "Criminal defense
4 attorney, Northwest Indiana," the first ones you see are those
5 that pay Google to advertise. They literally pay Google for
6 that position. They have to pay either on a monthly or an
7 annual basis to get that position. Then below that, the
8 sequence with which they appear are based on a number of
9 criteria under the algorithm that Google employs. There are
10 companies that you can pay that take and do things (inaudible)
11 move you up the ladder on where you appear. You can also, on
12 your own (inaudible), if you increase the number of blocks you
13 file, the number of hits you get on your web site. All these
14 different criteria will move you up the food chain in terms of
15 where you are if somebody Googles it.

16 So he will periodically take money he's earned from the
17 sale of his music or (inaudible) and use that to enlist one or
18 more of these service companies. They then do what they do to
19 move him up. So I want a Chicago area rapper. I'm told
20 there's more than one. So to enhance his relative position,
21 that's how the business works.

22 So what is he asking for? He is asking in order to
23 maintain the business he does have -- and I'm not versed in
24 rap, as it turns out, but I have talked not only to his
25 manager, I've talked to (inaudible). I've talked to several

1 others. Apparently he's something of a rising star in the
2 market garnering a positive reputation. He's got the
3 opportunity to work. He's got the opportunity to sell his
4 music (inaudible).

5 If he cannot go on -- and these are the specifics he's
6 asking. If he can't go on the face of a fan page and post --
7 and have posted on there promotions about his music and his
8 appearances, Instagram and Twitter, he's effectively eliminated
9 from the ability from the current marketing techniques from
10 working, from earning an income.

11 So those are the requests. And I would throw out that
12 each one of those, for obvious reasons, are publicly accessible
13 sites. There's no secret sites that (inaudible). And we are
14 more than happy to provide each one of those addresses to the
15 Government, or whoever wants it. They want him on there to
16 make sure what he's posting has to do and is exclusively
17 related to his music business and not in any way, shape, or
18 form to do with anything improper or anything illegal.

19 So that would be the evidence we have. I'm happy, to the
20 extent of my knowledge, to answer any questions the Court has,
21 to answer them now.

22 THE COURT: I think I followed what you said.

23 Thank you, Mr. King.

24 Mr. Cattamanchi.

25 MR. CATTAMANCHI: Yes, Your Honor. With respect to

1 the contact between the two defendants, I would echo what
2 Mr. King had stated. I would add the following information:
3 For Ms. Hatcher to take her baby to the doctor, it's very
4 useful for the health of the baby and for the doctor, for
5 Mr. Ford to also be there. So this restriction on their
6 contact if (inaudible) of medical care for the child.

7 THE COURT: How so?

8 MR. CATTAMANCHI: In that -- well, it's useful for
9 the doctor to have both parents present when taking care of the
10 baby. It's whatever the questions the doctors may have that
11 Ms. Hatcher may not be able to answer, Mr. Ford possibly will
12 be able to answer. Just as a general matter, it's helpful and
13 useful for a medical doctor to have both parents present when
14 dealing with the child.

15 I would also note that -- and I'm not versed in this, but
16 my understanding is that Ms. Hatcher wants, and Mr. Ford, want
17 to have the baby christened. And my understanding is that for
18 that to happen, it would be beneficial, if not required, for
19 both parents to be there to that event.

20 And, third, it's very difficult for Ms. Hatcher to take
21 care of the baby entirely on her own and then have to arrange
22 through a third party for Mr. Ford to see the baby without them
23 having any contact with each other. That's caused -- at times
24 it just made it impossible for Mr. Ford to see the baby because
25 Ms. Hatcher and Mr. Ford cannot communicate. They can't talk

1 on the phone. They can't arrange visits. They can't have any
2 communication whatsoever. So it's at times made it impossible
3 for Mr. Ford to see the baby. It's at times made it very
4 difficult for Ms. Hatcher to go about and run errands that she
5 needs to run. She cannot find a third party to take care of
6 the baby, where if she were able to have contact with Mr. Ford,
7 she would simply ask, "Can you watch the baby? I have to run
8 to the store. I have to run here or there." And so it's
9 unduly burdensome on her that way as well.

10 And, Your Honor, as I said, I echo what Mr. King has said.
11 We would ask that the Court permit them to have contact. And
12 as in any co-defendant case, bar improper contact, bar any
13 discussion of the case at hand, and I think that would be
14 sufficient to meet the requirements of the Bond Statute, which
15 is to always be the least restrictive for the condition that
16 would reasonably assure the safety of the community.

17 I don't think the Government has, even with the evidence
18 that they have -- again, that was more than two-and-a-half
19 years ago. (Inaudible) there's a lot of assumptions being
20 made. But, regardless, two-and-a-half years ago, there's no
21 allegation that last week, last month, six months ago, a year
22 ago they had any kind of improper contact regarding this case.

23 Now, with respect to the other issues that I'm asking the
24 Court to resolve, there are three other issues. First, there's
25 no access to any computer. Second, there's no use of social

1 media. And the third one, which I did not address in my
2 motion, is disclosure of charges to current or prospective
3 employer.

4 I'll proffer that Ms. Hatcher is now enrolled at an online
5 university. She would like to complete coursework at that
6 university. Now, she has done -- she has applied via her
7 phone. But in order to complete the coursework and to
8 participate in the classes, she needs access to her computer.
9 She needs to use the computer for that purpose.

10 As far as social media, as I note in my motion,
11 Ms. Hatcher, prior to being arrested for this case, had signed
12 up to be a representative for Avon. And in order to do that,
13 she needs to -- she had set up a Facebook page, and my
14 understanding is that the way Avon works, you act as sort of an
15 independent contractor. You advertise and sell Avon products
16 on your own. And one of the means of advertising, in fact, the
17 primary means for advertising is Facebook and other social
18 media. So not permitting her access to social media really
19 prevents her from pursuing her course of work that she's
20 interested in.

21 And I would also note, as I did in my motion, that there's
22 nothing in the indictment that, or in the complaint, that
23 alleges any improper use of social media by Ms. Hatcher.
24 There's no relation whatsoever. The bond condition that's
25 imposed does not in any way reasonably assure the safety of the

1 community, the safety of the community with respect to
2 Ms. Hatcher.

3 Finally, Judge, with respect to the third issue of
4 disclosure of the charges with respect to employers. If an
5 employer is interested to know about whether an employee, or
6 prospective employee, has any charges, that employer will ask.
7 And I'm not sure that the course of mandate that Ms. Hatcher
8 disclose the charges of conduct, that being the employer
9 (inaudible).

10 Thank you.

11 THE COURT: All right. Thank you, Mr. Cattamanchi.

12 Ms. Berkowitz.

13 MS. BERKOWITZ: Your Honor, is it all right if I stay
14 at counsel table?

15 THE COURT: Sure.

16 MS. BERKOWITZ: I guess I'll try and take these one
17 by one. The first would be the conditions of release as it
18 relates to the social media. This Court put into place, after
19 some extensive discussion within the Court, a requirement that
20 is contained in black and white within this Court's order
21 setting out the conditions of release. It is on page 2 of the
22 order, and it specifically says, "In addition to not opening
23 any new credit cards or financial accounts or lines of credit,
24 no access to any computers at all besides cell phone," period.

25 "No use of social media and no social media postings by

1 yourself or third party on behalf of defendant," period.

2 That was put in place on October 30th, 2014. On
3 October -- on November 8th, there's a posting, which is
4 attached to a pleading, and if the Court doesn't have it, I
5 have a copy of it.

6 THE COURT: I have it right in front of me.

7 MS. BERKOWITZ: It's a posting on Defendant Kevin
8 Ford's Facebook page by someone by the name of John Doe The
9 King Moseley. I don't know if he's related to a Mr. Matt
10 Moseley, who is a defendant out of Chicago in the same cracking
11 cards conduct, but it is -- it states -- it's bandmancomehome,
12 and it's bandmankevo. The sponsors are Power Move, L.T.
13 Entertainment, Band Plan, which happens to be Defendant Ford's
14 operation. Presenting bandmankevo out on bond, cash bar.
15 Performing -- I'm sorry -- cash bash. Performing "Baller In
16 Me," which is one of his older rap records, and "Want To Be
17 King Louie." Again, older. This is not new music. But this
18 is clearly for the benefit for the defendant. The defendant is
19 sponsoring it, and this is done after the Court already put
20 something in place telling him, "Don't do that."

21 Now, the Government, certainly -- and this Court would be
22 within its rights to say, "Well, you violated the terms of your
23 release. You clearly can't comply with even this. We should
24 revoke you."

25 I'm not asking to revoke the defendant, Your Honor, but

1 I'm asking to keep in place the conditions that you put there
2 and you put for a reason because contrary to what counsel has
3 said, it is very clear from the indictment that these
4 defendants have used social media rather extensively and
5 creatively to obtain access to information that they have then
6 used to commit their criminal conduct, specifically recruiting
7 people to give them their bank cards and their PIN numbers, and
8 Defendant Hatcher is no less guilty of that herself. While she
9 hasn't -- well, we have her using her phone to send out those
10 same kind of text messages, those same kind of messages that
11 we've seen on Facebook postings by bandmankevo, Defendant Kevin
12 Ford, and his co-defendants. And there was no effort prior to
13 issuing this posting on Facebook to ask the Court, "Hey, do we
14 have permission to do this?"

15 After the fact, after this has already happened, after
16 money has already been obtained, after the parties happened at
17 the strip club, the defendant then comes to you and says, "Oh,
18 you know what? We changed the terms of our release and our
19 access to social media."

20 The horse is already out of the barn, Your Honor. I think
21 the conditions that you've put in place are appropriate given
22 the nature of this case, and there's no reason why they should
23 change especially when we get to the other requirements that
24 the Court's put in place, and that has to do with no contact
25 amongst the defendants.

1 Oh, I'm sorry. Maybe I should -- just backup. Just one
2 more thing on the social media. Counsel seems to be asking for
3 the ability of Kevin Ford to use money to effectively pay
4 people to like his music.

5 The Government, and I'm proffering, has evidence. The
6 defendant has a PayPal account, and so does Ms. Hatcher, which
7 they've used to pay people to like the defendant's music. I
8 don't know who really likes the defendant's music. If it's
9 just the people that he's paid to like, or if he actually has a
10 following, but that's almost besides the point. It's the
11 access to social media. It does not appear to be a necessity
12 when the defendant himself has a manager, representative,
13 Twista, I think is his name. He's an old-time, recognized rap
14 artist from the Chicagoland area. Certainly, if the
15 defendant -- and the defendant has identified himself as
16 working with Twista, he can use to post something about any
17 kind of concerts he's giving. He can certainly use that
18 individual's website to put out there that he's got a concert,
19 or he's working with Twista.

20 I'm sorry. Getting back to the contact amongst the
21 defendants. There's a reason why this is in place, and the
22 Government has phone messages from when the defendants -- Kevin
23 Ford and Cortez Stevens were arrested in April of 2012, and
24 they were transported to the Lake County jail. They were
25 arrested for conduct directly related to cracking cards. In

1 fact, that is in the indictment in this case. What they did is
2 they had Mercedes Hatcher, in particular Kevin Ford and
3 Mercedes Hatcher had many phone calls from the jail where
4 Mr. Hatcher -- Mr. Ford is directing Ms. Hatcher on things to
5 do. He needed some -- and I have a -- I can play the CD, Your
6 Honor. They're very long. Or I can just give them to the
7 Court. I can proffer what's in the CDs. There are two of
8 them. It would be Exhibit 1A and 1B.

9 THE COURT: I mean, I don't want to cut you off, but
10 I don't want to cut off the Defense either, but is it possible
11 that you could just proffer what's in there, and then they can
12 respond by proffer?

13 I mean, you've all had the opportunity to listen to these,
14 and I don't know that -- it's probably more pertinent,
15 actually, for you folks. But if there are parts that you
16 wanted me to listen to, I would, but if you really want to just
17 proffer what it says, and then they can respond to it, and if
18 there's some major dysfunction between what we think it says,
19 then play for me what you need.

20 MS. BERKOWITZ: I could proffer.

21 THE COURT: Is that okay, then, Ms. Berkowitz?
22 Mr. King? Mr. Cattamanchi?

23 Okay.

24 MS. BERKOWITZ: On April 24th, 2012, there's a
25 phone call at 9:19 between Defendant Ford and Defendant

1 Hatcher, and the question -- among the questions that Ford asks
2 of Ms. Hatcher is, "What about my Maserati?"

3 Hatcher is being directed by Ford to make sure that the
4 Maserati is put away, hidden from law enforcement authorities.

5 Your Honor, I'm going to proffer that that Maserati was
6 purchased with proceeds from the criminal activity for which
7 this defendant was charged. And, in fact, the Government
8 subsequently was able to find that Maserati, and it was
9 forfeited, civilly forfeited. The Maserati was taken;
10 defendant never contested it. It is now in the possession of
11 the United States Government.

12 In addition to directing to hide the Maserati, put it in
13 storage, take it away, there is a conversation, and Hatcher is
14 telling Ford, "Your mother said take it out of Indiana."

15 There's another conversation that occurs between Hatcher
16 and Ford -- two conversations April 23rd, 2012. There's one
17 phone call at 1433, and then another one at, I believe, 1913.
18 1914. And the call that occurs at 1433 on 4-23, Ford --
19 Hatcher is telling Ford she has two moves the next day.

20 The Government is going to proffer that those moves relate
21 to the criminal conduct that's involved in this case. This is
22 moving money, moving, getting checks deposited, getting
23 payments through, cashing out of money orders. She said that
24 she missed the mail so she had to redeliver it. She tells --
25 Ford tells Hatcher, "You got it? Tell Cortez" -- who is Cortez

1 Stevens, a defendant in this case, who was also, as I said,
2 arrested back in April of 2012 -- "no talking." Hatcher said
3 that she's at home on the computer.

4 We believe that the home she's referring to is the home in
5 Merrillville that we subsequently searched and found a
6 computer, found photographs of Defendant Cortez Stevens at, and
7 also the indication that both Defendant Ford and Defendant
8 Hatcher used that same computer.

9 Hatcher is telling Ford that she got off the phone with
10 Cortez, that he told her to get the phone number for an unknown
11 individual named Garland. Hatcher says she has one of those
12 CDs for the next day. We understand "CD" to be a certified
13 deposit, and by that I mean a deposit that would be accessed
14 only immediately. These are deposits where the routing number
15 is for a large corporation or a government entity where the
16 bank will pay almost immediately upon the check being
17 deposited.

18 Ford asked Hatcher if she's paid the storage lady. And
19 also he tells her -- he's got an Audi. He tells her that he
20 wants her to call his mom tomorrow and to have her put the Audi
21 in her name. Again, hiding assets. These are proceeds -- he
22 purchased that Audi with proceeds from criminal activity.

23 Ford tells her that "Darius knows how to crack CDs and
24 pins."

25 Ford tells Hatcher to make sure to clean up, to get all

1 the trash out of there. And we understand that to mean to get
2 all the evidence out of the apartment.

3 Hatcher tells him, "It's too late. It's already gone."

4 That he asked her about the thing behind the computer.
5 She says she's already on it, and it's gone. And then Ford
6 tells Hatcher to get some paper. Paper we understand to mean
7 the bonded paper that is used to create these phoney checks the
8 defendants deposit and then subsequently cash.

9 Just from those conversations, it is clear that these
10 defendants have, in the past certainly, colluded in order to
11 further engage in criminal activity.

12 Now, I understand that the defendant and his girlfriend,
13 Ms. Hatcher, had a child, but at the time of this indictment,
14 the defendant and Ms. Hatcher were separated. They were not
15 living together. Ms. Hatcher was living in Danville, Illinois,
16 which I understand she still lives. She has parents there, and
17 her parents have supported her and helped her with her child.
18 I'm not sure why the sudden need for immediate access to
19 Defendant Ford.

20 We're not trying to prohibit him from having access to his
21 child, and I think in the conversation that we had initially
22 regarding the terms of supervision, the Court made it clear
23 that he certainly can, but there has to be some parameters on
24 it. It is not an opportunity to engage in conversation about
25 the case or to collude about a defense, it is only an

1 opportunity to hand off the child, and that's it. This new
2 found need to be together is only since the indictment, Your
3 Honor.

4 If I may have just one minute.

5 We have some information from the condo manager of the
6 defendant's building telling us that Ms. Hatcher has not been
7 around for some time, so -- prior to the arrest. So there's
8 no -- it seems kind of unusual that all of a sudden we are
9 hearing that there's a need for this interaction which didn't
10 previously exist. We're not asking, Your Honor, to revoke the
11 defendant. We're not asking -- we didn't ask to have them
12 incarcerated even though we knew that there was a prior
13 collusion that was involved in this case. We're just asking
14 for the Court to keep in place the rules that you've set
15 regarding the use of social media and the contact amongst
16 defendants.

17 Thank you.

18 THE COURT: Thank you, Ms. Berkowitz.

19 Further proffer or evidence, Mr. King or Mr. Cattamachi?

20 MR. CATTAMANCHI: I would just note, Judge, that
21 Ms. Hatcher lives in Calumet City, Illinois, with her aunt.
22 She does not live in Danville. And I would just note that
23 she's been in a four-year relationship with Mr. Ford, and that
24 they've lived in different locations, but they're not --
25 they've never been separated.

1 THE COURT: Okay. Have they never lived together?

2 MR. CATTAMANCHI: They have lived together at times,
3 and, I mean, right now, she's living with her aunt in Calumet
4 City, Illinois.

5 THE COURT: Okay. All right.

6 Anything further on that, Ms. Berkowitz? Proffer?

7 MS. BERKOWITZ: Just one thing. You know, as we were
8 investigating this case, we checked the Facebook page for both
9 of them, and they were not Facebook friends, which is an
10 indication of the sort of rupture in the relationship prior to
11 the indictment.

12 THE COURT: Okay.

13 Mr. King, anything further? Proffer?

14 Okay. Mr. Cattamachi?

15 MR. CATTAMANCHI: No, Judge.

16 THE COURT: I'll keep going around until someone
17 doesn't have anything to say. We are at that point.

18 Okay. Argument any further?

19 I mean, there's been argument interspersed. Is there
20 anything further you would like to say by way of argument?

21 Mr. King?

22 MR. KING: (Inaudible). What the word "paper" meant
23 (inaudible) and this whole social media thing. First of all,
24 (inaudible). If I understood one suggested argument by the
25 Government is that my client is taking his money and paying

1 people to like his music. That is not exactly what promotion
2 is. Promotion is a sum to promoters to services as they went
3 through to enhance one's stance on Google and other outlets in
4 order that more people buy more music so that you actually net
5 a profit as opposed to have a wash or end up spending money at
6 a loss in your endeavor.

7 So I'm not sure I -- you know, we proffered. He is paying
8 for promotion. There's no question about it. His most recent
9 live appearance had in excess of 4,000 people in attendance.
10 There are other artists as well.

11 The Government -- this I really didn't understand. Really
12 didn't understand. The Government is contending, without any
13 evidence, that the Exhibit A they attached to their filing,
14 which I think the consensus is John The Doe King Moseley posted
15 on his web page. I don't think there's any question about
16 that. And notwithstanding the fact that apparently the only
17 person that has spoken to John The Doe King Moseley (inaudible)
18 is me who said, "I did it for my own promotional interest. I
19 was not asked to do so by Mr. Ford."

20 Now, apparently, the Government's interpretation of the
21 language in the current restriction is posted by third parties
22 on behalf of the defendant.

23 What "on behalf" means, I think, is significant. I hope
24 the Government isn't suggesting that he has culpability,
25 liability in some form or format because some other person with

1 their own self-interest did a posting without any communication
2 or any incentive or inducement by the defendant.

3 Now, if that's the interpretation, then that definitely
4 has to be changed.

5 But it was a curious bit of presentation by the
6 Government. In the same breath, they're suggesting because
7 there's other artists that he performs with, and to my surprise
8 one by the name of Twista was named, that the Government
9 suggested, if I understood this correctly, Twista, Twister,
10 Twista. Whatever his name is.

11 Is it a him?

12 That Twista could do the promotion for my client. Well,
13 why could Twista do the promotion for my client and not run
14 afoul of the Government's interpretation of the conditions of
15 release but John The Doe King Moseley can't? (Inaudible).

16 But the second piece is Twista is a competitor of my
17 client. He's another rap artist. Why would a competitor want
18 to promote my client's business? The answer is he wouldn't.
19 He wouldn't. He has no interest in doing so.

20 What we're asking -- the man has the right to make a
21 living. The way he makes a living, a legitimate living of
22 necessity involves three social media -- access to three social
23 media outlets, which I delineated earlier, each of which is
24 completely accessible, reviewable, monitorable by any agency of
25 the Government that so choosed to do so. And notwithstanding

1 that, the Government is saying, "No, he can't do that."

2 Look, I can use a computer for any number of purposes. I
3 can use it improperly to have wrongful communications with a
4 terrorist organization. I can use it to access cute videos of
5 kittens playing pianos. In his case, he is willing to have all
6 of that monitored, all of it subject at any moment to be looked
7 at to see what he is doing and to be prepared in front of this
8 Court, in front of the District Court, in front of whomsoever
9 to show, "I've not done anything except legitimately earn a
10 livelihood."

11 And given those circumstances, and given the state of the
12 evidence in this matter, Your Honor, I respectfully suggest
13 that his request is reasonable, and denial of that request for
14 that limited purpose, both to interact with the co-defendant
15 and limited access as we've laid it out here to social media
16 for his livelihood between, you know, while this case pends and
17 moves forward, would be unreasonable, and we respectfully ask
18 for the Court to grant both requests of modifications as to
19 Defendant Ford.

20 THE COURT: Thank you, Mr. King.

21 Mr. Cattamachi, do you have any further argument? I know
22 it was interspersed as well, but --

23 MR. CATTAMANCHI: Just a brief point. I think it's
24 important to separate Ms. Hatcher from -- to treat her
25 independently, separate from other co-defendants, and I say

1 that because I think she should have access to the computer,
2 access to social media without any requirement to monitor.

3 There's no allegation, as far as I can tell from the
4 complaint, that she has abused use of the computer or social
5 media in any way relevant to the offense. So I think there's
6 no reason whatsoever that she should not be able to use the
7 computer even if she didn't have this course as she's enrolled
8 in, and she should be able to use social media even if she
9 didn't have employment that she's pursuing through Avon.

10 But she does have those. I proffer that she is pursuing
11 that coursework and that employment, and so we would ask for
12 modification of bond conditions to permit her to use social
13 media and use the computer without any monitoring.

14 Thank you, Judge.

15 THE COURT: Thank you.

16 Ms. Berkowitz.

17 MS. BERKOWITZ: Just a couple of things. Your Honor,
18 I'm not sure when Defendant Hatcher signed up for the online
19 class, but, you know, if she signed up for it after she was
20 already prohibited from using social media and a computer, it
21 seems rather absurd. She was already under an order that said
22 she couldn't do that. So she should've asked for permission.

23 As far as her business Avon, she sat in court, Your Honor,
24 and told you she wasn't making any money. She had a Facebook
25 page, but she said she wasn't making any money at it.

1 Defendant Ford says that Twista is a competitor. That I
2 don't find believable given the fact that the defendant signed
3 with G & G Entertainment, which is owned by Twista. And, in
4 fact, the BMW that he drives and is sitting in the parking
5 garage of his condominium is actually owned by Twista.

6 I guess I don't think we're getting very accurate
7 information from defendants, and I think that there is a
8 disregard for the rules that this Court put in place that are
9 the least onerous on them to allow them to remain out.

10 Again, Your Honor, the Government would ask that these
11 defendants be held to the conditions that the Court put in
12 place. And if there are any questions about what is on those
13 jail tapes -- the Government has the CDs -- I don't want the
14 Court to just accept at face value what I'm telling you. You
15 can hear for yourself. It is plain as day when you hear it,
16 that the defendants, Hatcher and Ford, are colluding; that they
17 are colluding by destroying evidence, hiding proceeds from
18 criminal activity. So there's a pattern. There's a history
19 there between these two defendants. And what the Government is
20 asking simply to separate them, to not have them interact on
21 anything other than just handing off of their child, and to
22 prevent them from using social media is not too onerous for
23 these defendants.

24 If the Court would like to have those CDs, I'm happy to
25 provide them to the Court if there's any question about the

1 representations to what's on there from the jail calls.

2 THE COURT: All right. Thank you.

3 Mr. King, anything further?

4 MR. KING: No, Your Honor.

5 THE COURT: Mr. Cattamachi?

6 MR. CATTAMANCHI: Just to make a quick point, Judge.

7 As I proffered, Ms. Hatcher signed up for this course via her
8 phone. So she did not use a computer to sign up for the
9 course.

10 THE COURT: Correct. But she's allowed to use her
11 phone.

12 MR. CATTAMANCHI: Correct.

13 THE COURT: But she did sign up for it after the
14 restriction was placed.

15 MR. CATTAMANCHI: There's no restriction on her using
16 a phone.

17 THE COURT: If it's an online -- she's not allowed to
18 be online.

19 MR. CATTAMANCHI: No. There's only restriction on
20 her use on social media. There's no restriction on her being
21 online.

22 MS. BERKOWITZ: It says "computer."

23 THE COURT: Computer use.

24 MR. CATTAMANCHI: Computer. I assume that --

25 THE COURT: You're asking for an exception so that

1 she can do an online course?

2 MR. CATTAMANCHI: Right. I'm asking for that
3 exception, but as of now, there's no use -- restriction on her
4 use of a cell phone to sign up for the course online. Her
5 phone can access the Internet.

6 A computer is a laptop or a desktop as far as I -- that's
7 what I advised Ms. Hatcher. So if she violated, then I advised
8 her to violate. But I advised her --

9 MS. BERKOWITZ: (Inaudible) that there's a violation
10 because Defendant Hatcher used her cell phone to sign up for
11 the class. We're just saying -- she signed up for an online
12 class when she knew she was prohibited from using the computer.

13 THE COURT: She didn't violate, but she signed up for
14 something that if she went in and did it, it would be a
15 violation.

16 MR. CATTAMANCHI: Right. And I advised her to sign
17 up for the course with the view that I would attempt to seek
18 modification of the bond conditions to permit her to complete
19 the course.

20 THE COURT: Okay. That's what I understood.

21 MR. CATTAMANCHI: Right.

22 THE COURT: Okay. The problem is is that we have
23 very serious crimes that are alleged against both defendants,
24 and culpability and how much one or the other is involved gets
25 muddled, and some may be more culpable than others, but that

1 doesn't mean that one of the others couldn't talk the other
2 person into being more culpable and being more active. And,
3 unfortunately, there's a lot of things -- as we all know,
4 there's a lot of things you can do with a computer. There's a
5 lot of legitimate things that can be done both professionally
6 and socially, but also there are illegitimate things that can
7 be done. And the allegations are, and the proffers have been,
8 and what the Government believes will be the evidence, is that
9 the defendants used the social networking sites like Facebook
10 and Twitter and Instagram, YouTube, different, to recruit
11 others to engage in these frauds.

12 And so if you have a business that has been used as both a
13 legitimate business and then -- but also as a fence for
14 illegitimate purposes, it's not unreasonable as a condition of
15 bond to make that business be closed and take that away.

16 The probation office -- the Government can't be there at
17 all moments to listen to every conversation to know exactly
18 what is meant by, "Come to this place or this party," and then
19 what conversations flow from that. And it just seemed -- it
20 just seems like the recruitment of people for these schemes is
21 just similar to the recruitment for anything. And it's in the
22 minds of these defendants what their intent is, and I'm not so
23 sure that the Government or the probation department can just
24 sort that out effectively enough to make sure that there's no
25 danger that they're going to be committing these very serious

1 crimes again, or recruiting others to commit the crimes on
2 their behalf. Or if, you know, Mr. Ford doesn't have access to
3 the Internet, then if Ms. Hatcher does, even in the short
4 period of time that they're allowed to pass child or talk about
5 the child, or on the way to the doctor's office not also talk
6 about recruiting people for illegal activity, and the illegal
7 activity went on for a lengthy period of time. And,
8 apparently, there were arrests and forfeitures of cars, and the
9 illegal activity continued. That's what the Government is
10 saying.

11 So those are the concerns in fashioning the conditions of
12 bond. Those are some of the concerns, and none of that has
13 been alleviated. I mean, I understood at the time when I made
14 the order very similar things to what we're talking about here;
15 that this would be difficult, potentially, for the defendants,
16 but it appeared necessary then and it appears necessary today.
17 So those conditions of the bond still remain.

18 I'm going to sustain those. They still remain in full
19 force and effect, and the defendants are cautioned that if they
20 violate those terms, their bond could be revoked and they then
21 could be detained pending their trials.

22 With regard to the child, that we have to have -- we have
23 to have an ability to visit with the child, that they are
24 parents of the same child. They have to have an ability to
25 relieve each other, baby-sit, pass the child off, to talk about

1 relevant things about the child to the benefit of the child.
2 The child needs to visit with -- the child needs to visit with
3 father and mother. So under that circumstance, they will be
4 allowed minimum contact with regard to talking about
5 visitation, exchanging visitation, doctors' visits and things
6 to the benefit of the child. Before doing those interactions,
7 let the probation officer know. If the probation officer is
8 not available to actually talk to, leave a message.

9 Is that okay with probation then? Is that reasonable
10 that --

11 PROBATION: That's fine.

12 THE COURT: And -- yeah, that's the way to do it.
13 Just let the probation officer know a time frame when and what
14 contact that's going to be, and it's only for the purpose of
15 their child. You're not allowed to discuss anything
16 obstructing with regard to the case, and both defendants are
17 warned that they shall not have any contact with other
18 co-defendants as well, and violations of that would mean a
19 revocation of the bond.

20 All right. Mr. King, any questions?

21 MR. KING: Two things. First of all, I am going to
22 request a written order (inaudible). But we need some
23 guideposts here so this kid is not unwittingly running afoul.

24 The second specific inquiry in terms of the language
25 that's being used here, you have the Government contending that

1 a third party unrelated to this case did a posting for their
2 own purpose, this whole poster thing you saw as Exhibit A. Is
3 the Court construing it as a violation of the terms of, by, or
4 on behalf of if it is done by a third person without impetus,
5 request, in any way, shape, or form by the defendant? We need
6 to know this going forward so I can do my job.

7 THE COURT: It's on his behalf because even though
8 the production company benefits, he also benefits. I mean,
9 it's advertising his concert. So it is on his behalf.

10 MR. KING: But in that context of being on his
11 behalf, it being done by a third person without any
12 relationship whatsoever to the allegations in this case could
13 not possibly be utilized for improper purpose, and that's why I
14 am having trouble following that interpretation.

15 THE COURT: But if it's posted, he's not supposed to
16 be using Facebook anyway. So if it's posted --

17 MR. KING: He's not.

18 THE COURT: But if it's posted on his Facebook site,
19 he has the power to close down his Facebook site.

20 MR. KING: And thereby voluntarily (inaudible).

21 THE COURT: Well, I mean, he's not supposed --
22 pardon?

23 MR. KING: Impoverishment. This is how he makes
24 money. I mean, that's why I'm suggesting perhaps some more
25 thought be given here because, with all due respect to Your

1 Honor, I am unaware of a case, in my experience, where there is
2 a legitimate business that is alleged to have engaged, in
3 addition to a legitimate part, an illegitimate part, and the
4 terms and conditions of pretrial release caused it to go
5 completely out of business. I am unaware of a case.

6 THE COURT: Mr. King, your client is the business
7 itself. He's the one that's the performer. If he were
8 incarcerated, then we would know that he wasn't able to be out
9 on the street and potentially doing the criminal conduct that
10 the Government is alleging that he has been doing. So that
11 would effectively close down his business.

12 Under the circumstance, he was granted a bond so long as
13 he wasn't able to continue that type of enterprise, and the
14 condition that was laid out on the bond was that if he didn't
15 have use of the computer and use of Facebook, then we -- the
16 Court was satisfied that it would eliminate at least that
17 aspect of what the Government was alleging that he had done.

18 MR. KING: Okay. So while that helps give some
19 guidance, but what the Court is doing is a blanket
20 prescription, a blanket prescription without regard of who does
21 it or what's done. Before we knew about the what's done. Now
22 we know that no one can make any posting on anything that he's
23 affiliated with without regard to him having had any
24 involvement whatsoever. And that's why I'm asking for a
25 written ruling so that the district judge can be as best

1 informed for all of our sake.

2 THE COURT: Correct. And I will do a written order.

3 MR. KING: Thank you.

4 THE COURT: Anything further, Mr. Cattamachi?

5 MR. CATTAMANCHI: I would just ask clarification. So
6 is Ms. Hatcher prevented from using a computer to complete her
7 coursework but she can use her cell phone?

8 THE COURT: She's allowed to use her cell phone
9 because she needs to make phone calls and talk to people. She
10 has a child. She has to communicate with people, but the
11 computer aspect of the phone shouldn't be used. It's just --
12 without making her get a new phone that didn't have a computer
13 on it, it's just not -- you're just not able to do it. So
14 that's why I said that they could use their cell phones. I
15 want them to be able to communicate at least in some way.

16 MR. CATTAMANCHI: Can she use email? She's not
17 allowed to be online?

18 As far as I understood, "no access to any computers," I
19 understood that to mean a desktop computer or a laptop
20 computer. I didn't understand that to restrict her to the use
21 of her phone.

22 THE COURT: But the phone is a computer as well.

23 MR. CATTAMANCHI: So is the Court restricting her use
24 of her phone to only making telephone calls, because she
25 communicates with her instructor via email using the phone?

1 She completes the initial assignment she was able to do via the
2 phone.

3 THE COURT: She signed up for a computer course, a
4 course that's done online after it was restricted from her to
5 be online.

6 MR. CATTAMANCHI: I didn't understand that it was
7 restricted for her to be online. That's not how I read the --

8 THE COURT: You're online through a computer. Just
9 because your phone also has computer-like functions --

10 MR. CATTAMANCHI: Okay. So she's not allowed to
11 use --

12 THE COURT: She's allowed to use the phone to talk
13 with people on the phone, but she's not supposed to be on a
14 computer or online.

15 MR. CATTAMANCHI: Okay.

16 THE COURT: Any other questions?

17 MR. CATTAMANCHI: No.

18 THE COURT: Mr. King?

19 MR. KING: Text messaging is a function --

20 THE COURT: Text messaging is the same thing as a
21 phone. And so text messaging is okay, yes.

22 And the probation officer, you've been wanting to say
23 something.

24 PROBATION: Aside from that, I just want to make sure
25 what the order was for them to contact us for child

1 (inaudible).

2 THE COURT: Just to let you know --

3 PROBATION: When they're meeting or all contact on
4 the --

5 THE COURT: Just to let you know that they're going
6 to be meeting or they're going to be talking about the child,
7 visitation with the child.

8 PROBATION: Thank you.

9 THE COURT: Would it be better if I put a limit on
10 how many times, or is that undoable?

11 Counsel, do you have any question about that?

12 MR. CATTAMANCHI: No. I think, you know, we'll see
13 how it goes. I think she'll contact probation if she needs to
14 contact Mr. Ford.

15 THE COURT: Correct. If she -- and they're going to
16 set up a visitation, and then just contact and tell probation.

17 All right. Mr. King?

18 MR. KING: Nothing.

19 THE COURT: All right.

20 Ms. Berkowitz, yes.

21 MS. BERKOWITZ: Your Honor, I just want to point out
22 something based on what Mr. King said. The Facebook posting
23 that is posted on Defendant Ford's Facebook page, it is a
24 picture of him, and it identifies the presenters. Among the
25 presenters is Bandplan. That is Kevin Ford's business, his

1 company. So it is disingenuous to claim that the defendant did
2 not benefit, or he was not in any way involved or knowledgeable
3 about this since he's among the presenters.

4 THE COURT: Okay. Mr. King.

5 MR. KING: Nobody said they didn't benefit. What was
6 said was he didn't initiate, encourage, (inaudible). And that
7 I do stand on. There's nothing from the Government's offer
8 that would suggest (inaudible).

9 THE COURT: All right. But it's clear now.

10 All right. Thank you.

11 (Hearing concluded.)
12
13
14
15
16

17 CERTIFICATE OF REPORTER

18 I, Richard D. Ehrlich, a Registered Merit Reporter and
19 Certified Realtime Reporter, certify that the foregoing is a
20 transcript of the CD transcribed to the best of my ability.
21

22 s/Richard D. Ehrlich

January 23, 2015

23 Richard D. Ehrlich, Official Reporter

Date
24
25